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UNITED NATIONS NORMS AND GUIDELINES IN CRIME PREVENTION AND CRIMINAL JUSTICE: IMPLEMENTATION AND PRIORITIES FOR FURTHER STANDARD-SETTING

Working paper prepared by the Secretariat

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INTRODUCTION

1. The topic covered in this was included in the provisional agenda for the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, in accordance with Economic and Social Council resolution 1987/49 and General Assembly resolution 42/59, in which the continuing interest of the United Nations in crime prevention and the humanization of criminal justice was reaffirmed. It also derives from other mandates of the General Assembly. For example, in its resolutions 40/146 and 41/149, the Assembly requested the Economic and Social Council, through the Committee on Crime Prevention and Control, to give special attention to effective ways and means of implementing existing standards to pay due attention to new developments in this area and to keep human rights in the administration of justice under constant review. Subsequently, the Assembly, in its resolution 42/143, encouraged the continuing development of strategies for the practical implementation of United Nations standards and norms in that area; in its resolution 43/153 it urged Member States to develop such strategies; and in its resolution 44/162 it requested the Secretary-General to assist Member States in their implementation in particular under the programme of advisory services.

2. Similarly, the Economic and Social Council, in resolution 1989/63, encouraged the continuing development of strategies for the practical implementation of United Nations standards and guidelines in crime prevention and criminal justice, and of measures to assist Member States, at their request, in their implementation, as well as in evaluating their impact. In resolution 1990/21, the Council invited the Eighth Congress to consider ways and means by which to accord adequate priority to the implementation of existing standards and to explore the possibility of consolidating the reporting arrangements.

I. OVERVIEW OF DEVELOPMENTS AND PROBLEMS

A. Current developments

3. Since its foundation, the United Nations, drawing on the principles of its Charter and of the International Bill of Human Rights, has formulated numerous international instruments in crime prevention and criminal justice. The United Nations congresses on the prevention of crime and the treatment of offenders have contributed to this process of standard-setting, beginning with the First Congress, in 1955, which adopted the Standard Minimum Rules for the Treatment of Prisoners, 1/ endorsed by the Economic and Social Council in its resolution 663 C (XXIV).

4. In accordance with the recommendations of the congresses, other important instruments have been adopted in more recent years, such as the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 2/ the Caracas Declaration (General Assembly resolution 35/171, annex); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex); the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex); the safeguards guaranteeing the protection of the rights of those facing the death penalty (approved by the Economic and Social Council in resolution 1984/50, annex); and the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47, annex).

5. The work of the United Nations has been expanded by the additional standards adopted by the Seventh Congress and endorsed by the General Assembly in its resolution 40/32, namely the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order; 3/ the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex); 4/ the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); 4/ the Basic Principles on the Independence of the Judiciary; 5/ and the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners. 5/

6. Further, in 1989, the Economic and Social Council, on the recommendation of the Committee on Crime Prevention and Control, adopted the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (resolution 1989/65, annex), the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (resolution 1989/60, annex) and the guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials (resolution 1989/61, annex). These instruments were endorsed by the General Assembly in its resolution 44/162. Also in 1989, the Council adopted additional resolution 1989/57, on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and resolution 1989/66, on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

7. The United Nations is also constantly exploring new options and policy responses to changing needs and priorities. For example, in preparation for the Eighth Congress and in pursuance of mandates of the Council contained in resolution 1986/10, work on the formulation of new standards, guidelines and model treaties has been finalized in the following areas: prevention of juvenile delinquency; protection of juveniles deprived of their liberty; non-custodial measures for the treatment of offenders; extradition; mutual assistance in criminal matters; transfer of criminal proceedings; transfer of supervision of conditionally sentenced or conditionally released offenders; role of lawyers; role of prosecutors; use of force and firearms by law enforcement officials; and prevention of crimes that infringe on the cultural heritage of peoples.

B. Emerging problems

8. The need expressed by Governments for the establishment of new international standards and norms has contributed to a drastically changed situation in terms of reporting and monitoring. The changes are both quantitative, involving a major expansion in their number, and qualitative, due to increasing sophistication and complexity of the areas covered, as well as the many interfaces with the United Nations human rights programme, as reflected in the recent General Assembly resolutions on human rights in the administration of justice. Detailed information on reporting requirements is provided in document E/AC.57/1990/WG/1.

9. Because of the cumulative demands on States and on the Secretariat as a result of the growing pace and range of work, and given the limited resources available, it has even been suggested that priority be given to the implementation of existing standards over the initiation of new activities. These proposals are not new. They were made at least as early as the Sixth Congress 6/ and were repeated at the Seventh Congress. 7/ However, in view of the adoption of an increasing number of standards during the last five years,

the implementation of which should be ensured, bringing standard-setting to a temporary halt would not help to avert an impending deadlock, which could affect both the mechanisms and the procedures for overseeing compliance with United Nations instruments.

10. It has also been noted that, under the current policy of a zero-growth budget, the United Nations will be unable to implement adequately all the recommendations emerging from the congresses. There is, however, a compelling need for more resources to be allocated to permit expanded assistance to interested Member States. The political will of Governments should be translated into budgetary decisions. Unless this happens, the Organization and Member States will be prevented from taking a long-term approach to remedy this situation.

C. United Nations action

11. On the recommendation of the Committee on Crime Prevention and Control at its tenth session, the Economic and Social Council, in its resolution 1989/63, invited Governments to adopt the United Nations standards and guidelines in national legislation and practice, to design realistic and effective implementation mechanisms and to increase, as far as possible, their support for technical co-operation and advisory services. The Secretary-General was requested, inter alia: to establish pre-sessional working groups of the Committee, which would prepare certain items for the Committee's discussions; to oversee the elaboration of questionnaires to be used for the reporting system; to examine replies, data and reports received from Governments and other relevant sources; and to identify general problems that might impinge on implementation and recommend viable solutions.

12. The Secretary-General accordingly convened a pre-sessional working group at Vienna on 1 and 2 February 1990, immediately before the eleventh session of the Committee. The Working Group did not have enough time to draw up detailed proposals for an implementation programme. It did, however, suggest a general approach to programming, with some concrete steps (E/AC.57/1990/WG.2, annex I), which was endorsed by the Committee.

13. On that basis the Committee submitted to the Economic and Social Council a draft resolution subsequently adopted as Council resolution 1990/21, in which the Council reiterated its request to Member States, inter alia, to implement the standards and norms, support the United Nations institutes and increase, as far as possible, contributions to technical co-operation and advisory services. The Council also authorized the Committee to continue its practice of convening a pre-sessional working group and the Committee's Chairman to designate members of the Committee to assist in periods between sessions in implementing standards.

14. In order to work as effectively as possible and avoid duplication, the Centre for Social Development and Humanitarian Affairs maintains close contact with the Centre for Human Rights in all activities related to human rights in the administration of justice, in accordance with the General Assembly resolutions 40/146, 41/149, 42/143, 43/153 and 44/162 and Commission on Human Rights resolutions 1987/33, 8/ 1988/33, 9/ 1989/24 10/ and 1990/81. 11/ Focal points have been created and are being developed within both centres to monitor the human rights aspects of the administration of justice within the various elements of United Nations programmes, as well as the work of specialized agencies, regional organizations and non-governmental organizations in consultative status with the Economic and Social Council, and to provide, as appropriate, advice on co-ordination and other relevant issues. Emphasis is being

placed on victims of crime and abuse of power; independence of the judiciary; the role of lawyers; the role of prosecutors; law enforcement, including the use of force and firearms by the police; treatment and human rights of prisoners and detainees; arbitrary or summary executions; and capital punishment.*

II. IMPLEMENTATION OF EXISTING STANDARDS

A. General observations

15. Successful implementation of existing standards requires both national and international action: it depends, above all, on efforts made by Governments within their domestic jurisdictions and on the assistance rendered for this purpose. United Nations standards and guidelines in crime prevention and criminal justice enjoy broad support; they are sufficiently general to respond to the needs of countries at different stages of development but they also express universal principles to which the international community is committed.

16. While many countries have successfully implemented these standards and guidelines, there are still shortfalls in many parts of the world, as reflected in various United Nations surveys. The major obstacles mentioned include the lack of co-ordinated action, shortage of funds, low priority, inadequate human and professional resources and, all too often, the lack of political will or public apathy. Greater public awareness might elicit both increased support and additional resources.

17. Ways in which the United Nations could assist interested Governments in implementing the standards and guidelines include: devising procedures for their application in the context of economic and social development strategies and the changes occurring in various parts of the world; strengthening technical co-operation and advisory services; incorporating United Nations instruments in national legislation and making them available, in the appropriate language and form, to all those concerned; using educational and promotional processes in schools, colleges and academies of criminal justice, as well as law faculties and professional groups; exploring the role of the mass media and their active support; increasing community involvement and creating a propitious atmosphere, as well as developing ways of overcoming resistance; establishing or strengthening national committees for the promotion of United Nations norms and guidelines; and improving evaluative research. All this implies extrabudgetary resources, both from Governments, for example in the form of increased contributions to the United Nations Trust Fund for Social Defence, and from international funding agencies, such as the United Nations Development Programme (UNDP), particularly when developing countries include relevant projects in their country programmes.

18. Internationally, the role and scope of United Nations activities in promoting the more effective application of standards and guidelines should be reassessed in line with General Assembly resolution 44/162 and Economic and Social Council resolution 1990/21. There should be wider dissemination of the reports submitted to the Committee on Crime Prevention and Control, and the role of the Committee and the congresses in evaluating and following up such reports, including recommendations for action, should be strengthened. Furthermore, collaboration with other Secretariat units, such as the Centre

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*For details, see E/CN.4/Sub.2/1989/23.

for Human Rights, should be developed even further, for example through a more regular exchange of information, programme review and co-ordination. In order to meet the many requests for technical co-operation, adequate support should be provided to the interregional and regional United Nations institutes for crime prevention and criminal justice, with reinforced advisory services, for follow-up action at the national level.*

B. Reports on the implementation of existing standards

19. A number of reports related to the implementation of existing standards will be considered by the Congress. While some have been specifically prepared for consideration of the Congress, others have already been submitted to the Committee on Crime Prevention and Control and are brought to the attention of the Congress mainly for its information.

1. Standard Minimum Rules for the Treatment of Prisoners

20. The Congress will consider, under item 4 (topic II) of its provisional agenda, the fifth quinquennial report of the Secretary-General on the implementation of the Standard Minimum Rules for the Treatment of Prisoners (A/CONF.144/11), prepared in response to Economic and Social Council resolutions 663 C (XXIV) and 1984/47. The report is based on replies to a survey from 49 Governments and several United Nations institutes and non-governmental organizations. Special emphasis has been placed, inter alia, on the status of prisoners, prison work, and educational and vocational training, in accordance with resolutions 10 and 17 of the Seventh Congress. 12/ Furthermore, as proposed by the Interregional Preparatory Meeting for the Eighth Congress on topic II (A/CONF.144/IPM.4), due attention has also been given to practical strategies aimed at improving prison conditions and to technical means for reducing overcrowding.**

21. Although the Rules "seek only ... to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions", 13/ their spirit or letter is often invoked in complaints against human rights violations, usually in conjunction with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. There are also those who argue that the Rules have become customary law or that they are binding qua treaty law as an authoritative interpretation of the Charter of the United Nations. 14/ Moreover, reference to the moral value of the Rules is made from time to time in domestic litigation, either as an endeavour to incorporate international standards into national law or in order to give content to constitutional or statutory provisions. 15/

2. Basic Principles on the Independence of the Judiciary

22. The Congress also has before it, under item 3 (topic I), a note by the Secretary-General (A/CONF.144/9), prepared in response to Economic and Social Council resolution 1986/10, section V, on the basis of replies to a survey

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*See section VI, subsection C, below.

**For details, see the working paper prepared by the Secretariat on criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures (A/CONF.144/10), submitted under item 4 (topic II) of the provisional agenda.

from 72 States and several United Nations institutes and non-governmental organizations. Although work on the report had started before the new procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary were adopted by the Council in its resolution 1989/60, the report pays special attention to the dissemination of the Principles, the problems faced in their application, the qualifications and status of judges and suggestions for future implementation.

3. Standard Minimum Rules for the Administration of Juvenile Justice

23. The Congress further will consider, under item 6 (topic IV), a report of the Secretary-General (A/CONF.144/4), prepared in pursuance of General Assembly resolution 40/33 and Economic and Social Council resolution 1989/66. It contains information on the implementation of the Standard Minimum Rules for the Administration of Juvenile Justice, received from 50 Governments, and from United Nations offices, United Nations institutes and intergovernmental and non-governmental organizations. It highlights the reforms that have been introduced in various juvenile justice systems thanks to the adoption of the Rules.

4. Code of Conduct for Law Enforcement Officials

24. Finally, under item 7 (topic V), the Congress will consider a report of the Secretary-General (E/AC.57/1988/8 and Add.1/Rev.1 and Add.2), prepared in response to Economic and Social Council resolution 1986/10, section IX, which brings up to date the previous report (A/CONF.121/12 and Add.1), submitted to the Seventh Congress. It is based on the replies of 79 States, Interpol and several non-governmental organizations to two surveys, conducted in 1984-1985 and 1987-1988. It focuses on the relevance and application of the Code and safeguards against possible violation of its provisions. The suggestions on the use of force and firearms by law enforcement officials contained in these reports have served as the basis for a new instrument in this area. Future reports on the Code will be prepared in accordance with the new guidelines for its effective implementation, adopted by the Council in its resolution 1989/61.

III. PREVENTION OF VICTIMIZATION AND PROTECTION OF VICTIMS

25. In recent years, there has been an increase in the extent and gravity of victimization throughout the world. Growing recognition of the need for recourse and redress for victims of crime and abuse of power has spurred some new international initiatives, particularly where entire nations have been victimized by predatory organizations or rulers, or when international terrorism has produced a significant number of innocent victims. Conventional criminality continues to trouble many countries. Scientific and technological advances have fostered new forms of crime and victimization, including various forms of consumer fraud and environmental offences.

26. A return to the democratic process and guarantees of essential human rights has reduced victimization in some countries and brought those responsible to justice. In others abuses continue, victimizing vulnerable population groups. Summary executions and torture have not diminished and "disappearances" of citizens still occur in some parts of the world (see Commission on Human Rights resolution 1990/30). 16/

27. The heightened sensitivity to human rights violations, however, and their close monitoring by the United Nations and by international and local human rights organizations, provide some check. The dissemination of United Nations

standards and feedback of information encourage this process, whose intensification should lead to a wider appreciation of these instruments, including the ones on victims' rights.

28. These and other issues were reviewed in the reports of the Secretary-General on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (E/AC.57/1988/3 and E/AC.57/1990/3), prepared in response to Economic and Social Council resolutions 1986/10, section III, and 1989/57, which are before the Congress, under item 7 (topic V) of its provisional agenda. Both reports highlight the work carried out so far in implementing the Declaration and outline priority areas for further action, including the development of international means of recourse, where national channels may be insufficient, and the elaboration of more detailed provisions for victims of abuse of power.

29. The impact of the Declaration on legislation and policy in a number of countries is also noted in the reports. Its dissemination, including translation into the local languages and use as training material, can further advance recognition of victims' needs. The formulation of charters of victims' rights, nationally and regionally, the issue of practical guides, the designation of focal points for victims' matters and the exchange of experience are also serving this objective. National meetings have proposed new measures. Thus the International Conference on Criminal Justice, Restitution, Compensation and Remedies for Victims of Crimes, held at Abuja, Nigeria, in 1989, called for a national policy that would also deal with victims of environmental and economic offences, which might affect entire communities.

30. An improved empirical base for planning victim services has been sought, both through international information networks and national data banks. Victimization surveys are increasingly supplementing official police statistics, with a view to estimating the "dark figure" of crime. The results of the first international survey, in 14 countries, confirm the usefulness of this approach, which is being further extended. 17/

31. Important initiatives continue to be taken by non-governmental organizations. In 1990, the World Society of Victimology organized an international training course on victims and the criminal justice system at Dubrovnik, where it also convened an international colloquium on abuse of power and victims' rights. Also in 1990, a colloquium on victims' rights and legal reforms: international perspectives took place at Oñate, Spain, under the auspices of the International Institute for the Sociology of Law and Victimology. A regional meeting was organized in preparation for the Seventh International Symposium of Victimology, to be held at Rio de Janeiro in 1991. The European Forum of Victim Services has held a series of meetings and is preparing a handbook.

32. The Economic and Social Council, in its resolution 1990/22, inter alia, invited the Eighth Congress to recommend the wide distribution of the guide for practitioners regarding the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/CONF.144/20) and the measures for implementation of the Declaration (E/AC.57/1988/NGO.1). The Council also recommended that Member States and the United Nations interregional and regional institutes should provide training to professionals and others concerned, taking into account the model training curricula developed for that purpose (E/AC.57/1990/NGO.3). The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities was requested to take into account, in his study of compensation to victims of gross violations of human rights, 18/ the work and recommendations of the Committee on Crime Prevention and Control.

33. In its resolution 11/1, 19/ the Committee on Crime Prevention and Control further recommended that the Eighth Congress give favourable consideration to the establishment, under the auspices of the United Nations, of a world foundation on crime control and assistance to victims. Its goals would be the following:

(a) To identify and mobilize financial resources in support of the implementation of international crime control programmes;

(b) To raise the awareness of the international community to crime situations and trends as well as issues involving victims;

(c) To advocate the expansion of initiatives contributing to effective crime prevention;

(d) To provide financial assistance to Member States that lack adequate resources for the implementation of crime control programmes;

(e) To fund scientific research and development of innovative technical means for crime prevention and control and to provide assistance to the regional and interregional institutes;

(f) To provide financial assistance to victims of international crimes.

34. In addition, the Congress will consider a draft resolution on the protection of human rights of victims of crime and abuse of power, 20/ transmitted by the Council on the recommendation of the Committee at its eleventh session. This text, based on proposals made by the Western Asia Regional Preparatory Meeting for the Eighth Congress (see A/CONF.144/RPM.4 and Corr.1), calls upon States to take into account the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in framing their national legislation, and recommends that the United Nations and other organizations strengthen their technical co-operation in this respect.

IV. EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

35. A manual is being prepared as a technical publication under the 1990-1991 programme budget for the biennium 1990-1991 further to the adoption by the Economic and Social Council, in its resolution 1989/65, of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, as endorsed by General Assembly in its resolution 44/162.* The manual, to be published after the Eighth Congress, includes an overview of United Nations and other intergovernmental and non-governmental criminal justice and human rights action. It also contains a number of legal and forensic protocols, developed in co-operation with the Minnesota Lawyers International Human Rights Committee.

36. The report prepared in 1988 (E/AC.57/1988/5 and Corr.1 and 2), which is before the Congress under item 7 (topic V) of the provisional agenda, relies on information provided by 57 States and reviews the major issues involved, including definitional problems, the obligation not to comply with an illegal order, training of law enforcement personnel, investigation procedures and the role of the victim's family.

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*The text of the Principles is to be reproduced in the compendium, a preliminary version of which is before the Congress in document A/CONF.144/INF.2.

V. CAPITAL PUNISHMENT

37. The attention of the Congress is drawn to the report of the Secretary-General on capital punishment (E/1990/38/Rev.1), containing the results of the fourth quinquennial survey called for by Council resolution 1745 (LIV) and prepared mainly on the basis of information received from 43 Member States for the period 1984-1988. In order to provide a more complete picture, the survey refers to a report, prepared in 1988 by Roger Hood, 21/ submitted to the Committee on Crime Prevention and Control at its tenth session, and published as a special issue of the International Review of Criminal Policy. Account is also taken of additional information provided by non-governmental organizations in consultative status with the Economic and Social Council, in pursuance of General Assembly resolutions 41/149, 42/143, 43/153 and 44/162. Reference is also made in the report to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty, adopted by the Assembly in its resolution 44/128.

38. The Hood report, referred to above, concluded, inter alia, that capital punishment had a far greater symbolic than practical significance, given that a substantial number of countries, which had introduced the death penalty for a wider range of offences, had not enforced it. Countries where capital punishment was not mandatory employed various mechanisms designed to limit executions to the few most serious cases. This raised the issue of whether the law and procedures resulted in arbitrary or discriminatory enforcement. Many criminological studies of decisions by prosecutors, juries, judges and courts of appeal supported the conclusion that no legal formula could be devised which would eliminate arbitrariness or discrimination in the use of the death penalty.

39. In view of the small number of Member States that replied, the conclusions of the fourth quinquennial survey could only partially reflect regional or global situations. There was, however, a significant trend towards abolition (11 countries have abolished capital punishment since 1984), as well as a clear need to distinguish between sporadic popular support for capital punishment and well-informed opinion, since the former was often a spontaneous reaction to certain forms of crime. Further efforts should be made to devise educational measures to emphasize respect for human life while stressing research findings on erroneous perceptions about the deterrent effect of capital punishment.

40. In future, in pursuance of Economic and Social Council resolution 1989/64, the report on capital punishment will be combined with the report on the implementation of safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Council resolution 1984/50. The latest such report of the Secretary-General (E/AC.57/1988/9 and Corr.2), prepared in pursuance of Council resolution 1986/10, section X, is also drawn to the attention of the Congress. Based on the replies from 74 countries, it reviews the status of implementation and dissemination of the safeguards.

41. The attention of the Congress is further drawn to paragraphs 3 and 5 of Council resolution 1989/64, in which Member States were invited to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about and the implementation of the safeguards and the death penalty in general, and were urged to publish, for each category of offence for which the penalty was authorized, if possible on an annual basis, information about its use, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on

appeal and the number of instances in which clemency had been granted, and on the extent to which the safeguards were incorporated in national law.

VI. ENHANCING THE IMPLEMENTATION OF EXISTING STANDARDS

A. Importance and functions of regular reporting

42. Reporting mechanisms lie at the very heart of the United Nations system for the promotion of standards in the administration of justice and human rights. While, however, the principle is widely accepted, some States have experienced difficulties in complying with reporting procedures.

43. In considering the reporting system, the pre-sessional working group of the Committee on Crime Prevention and Control at its eleventh session noted that it involved a number of difficult and time-consuming steps, including, for example: designing the questionnaire and requesting Governments to complete it; summarizing replies, some of which might be fragmentary, unclear or unusable in the form in which they were submitted; and drawing conclusions and providing guidance for future action, including recommendations on how to improve the situation in Member States (E/AC.57/1990/WG.2, para. 26).

44. Since the process is fraught with difficulties and requires intensive work and adequate resources, the Congress may wish to explore alternative and perhaps more effective ways of monitoring, taking into account:

(a) A more active intersessional involvement of Committee members and adequate conditions of service for its experts;

(b) Reporting cycles, i.e. a streamlined schedule of work;

(c) The growing burden imposed on many States by reporting obligations and the need for technical co-operation;

(d) The problem of inadequate reports;

(e) Excessive delays by some States in replying;

(f) Additional or alternative sources of information;

(g) The staffing and budgetary constraints of the Crime Prevention and Criminal Justice Branch.

45. The system of quinquennial reports may be reconsidered, since a five-year period may be too short to reflect changes in the legal systems. The frequency might be expanded, for example from five to seven or even more years in the case of some older standards for which several surveys have been carried out, such as the Standard Minimum Rules for the Treatment of Prisoners or the Code of Conduct for Law Enforcement Officials. Such longer cycles may not be advisable under rapidly changing conditions in many parts of the world. Political reforms can progress speedily, as recent events have demonstrated, and should be reflected. Further, the original reporting mandates should be taken into account. For example, in the case of the Standard Minimum Rules, the first Congress had proposed a periodicity of three years, which has been extended to five.

B. Role of the Committee on Crime Prevention and Control

46. The Committee overviews the implementation of most of the crime prevention and criminal justice standards.* Their growth, however, is creating serious monitoring problems. First, the cycle of the Committee's sessions is not compatible with a schedule of work based on regular reporting every five years, as required for most of the standards. Secondly, the Committee is informed about certain surveys only ex post facto, for example the surveys on capital punishment that are submitted directly to the Economic and Social Council, and those on Standard Minimum Rules for the Treatment of Prisoners. Thirdly, there are reports which, in view of their mandates, are prepared either for the General Assembly (for example reports on the implementation of the Milan Plan of Action 22/) or for the Congress (e.g. reports on alternatives to imprisonment and on the implementation of the recommendations of previous congresses). Although these reports are usually brought to the attention of the Committee, their previous consideration by other policy-making bodies does have a bearing on whatever follow-up action the Committee may propose.

47. The formulation of the questionnaires to be used in the surveys requires special skills and might be entrusted to a professional advisory group within the Committee. In view of political, economic, social and cultural differences, it is virtually impossible to ask all the relevant questions and to draw comparisons between divergent situations. Consideration might be given to a two-level reporting system: with the co-operation of the regional institutes for crime prevention and criminal justice regional reports could be prepared and then combined at the global level. This procedure, however, would pose an additional burden on the institutes. Serious consideration should also be given to reducing questionnaires to an absolute minimum, given the demonstrated inadequacy of this method of inquiry for providing reliable and comprehensive information.

48. It might also be useful to evaluate not only the level of implementation but also the effectiveness of the standards. Some reports from Governments are incomplete, either because the Government withholds information or, more often, because it does not have the basic information or technical resources to prepare a full reply. The difficulties faced by developing countries should be taken into account. In many countries, data cannot be properly processed and analysed simply because of infrastructural shortcomings in these countries.

49. Moreover, the Committee, charged with the tasks of receiving, assessing and recommending action on the reports, does not have the capacity to accomplish these tasks effectively across the whole range of subjects to be covered. In particular, its biennial meetings, with overloaded agendas on priority issues, do not permit adequate discussion, and its supporting Secretariat also has very limited resources. Consequently, it is hardly in the best position to identify existing obstacles to implementation and make recommendations to the General Assembly, the Economic and Social Council or other United Nations organs or bodies.

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*According to Professor Roger S. Clark, implementation, in the general human rights areas, normally refers to the setting up of procedures to monitor the state of compliance in some systematic way. See Roger S. Clark, "Human rights and the U.N. Committee on Crime Prevention and Control" in Annals of the American Academy of Political and Social Science, vol. 506 (1989), p. 80.

50. The Committee has been requested, however, to expand its role in both the elaboration and implementation of standards. While, at first glance, the Committee's activities seem to focus on the protection of rights in the administration of justice, further examination of its work in the prevention of juvenile delinquency or domestic violence suggests that its role also encompasses economic, social and cultural issues.

51. The Committee, the congresses, and the work of the United Nations in criminal justice generally have the advantage of emphasizing technical aspects and of thus avoiding the politicization sometimes prevailing in other bodies. The challenge to the Committee, as it moves to consider such implementation strategies as the creation of an early-warning system for victims, is not only to maintain its professional integrity but also to have adequate resources to discharge its responsibilities.

C. Technical co-operation in the context of development and political and socio-economic changes

1. Overview

52. Member States have a strong interest in technical co-operation in crime prevention and criminal justice, and serious efforts have been made in recent years to develop an expanded programme, especially by including projects in the UNDP country programmes. The United Nations Office at Vienna/Centre for Social Development and Humanitarian Affairs (UNOV/CSDHA) could play an increasing catalytic role by communicating technical advice to Governments through the UNDP resident representatives.

53. Suitable projects could be incorporated into the development co-operation programmes of the United Nations system. Based upon the survey of needs of Member States, technical co-operation could include: establishment and development of university law departments, criminal law development centres and law reform commissions; creation of adequate law libraries for criminal justice schools and personnel; assistance with the drafting of legal texts, in conformity with international standards; dissemination of information on United Nations instruments and constitutional documents protecting the rights of persons in the criminal justice process; publication of official law journals and collection and classification of legal materials; and support of legal aid programmes for indigent persons. In addition, Governments could be encouraged to develop crime prevention and criminal justice education programmes for the school system and courses for the training of criminal justice personnel.

2. United Nations institutes and other entities

54. All five regional preparatory meetings for the Eighth Congress recommended greater involvement of the United Nations institutes in the implementation of standards. These institutes, as well as the Arab Security Studies and Training Centre and the Australian Institute of Criminology, regularly hold seminars and training courses, providing fellowships and promoting dissemination of United Nations standards and norms, exchanges of information and experience, and adaptation of international instruments to the particular needs and priorities of the countries of each region.

55. During training courses and seminars conducted by the institutes, participants can exchange experiences and expertise about trends, systems and implementation of United Nations standards and norms in their countries. They thus obtain more vivid information than through written replies to questionnaires, since interested participants can ask for more details on the spot and

by comparing systems can more easily recognize their countries' problems. By collecting and analysing the material, the institutes can provide first-hand information about the extent of implementation and can conduct courses to assist countries, especially where there is a lack of reliable information, in developing reporting techniques.

56. As regional co-operation is a prime means of implementation, continuous support and increased advisory services are required. Furthermore, in view of the productive collaboration with the Council of Europe, the League of Arab States, the Organization of African Unity, the Economic and Social Commission for Asia and the Pacific and the Economic Commission for Africa, the Eighth Congress may wish to contemplate even stronger co-operative links with them and other intergovernmental regional organizations such as the Organization of American States, the Commonwealth Secretariat and the Economic Commission for Latin America and the Caribbean.

3. Advisory services

(a) Crime prevention and criminal justice

57. At the request of developing countries, the Interregional Adviser on Crime Prevention and Criminal Justice* has provided technical support in the context of socio-economic development and change. The establishment of national crime prevention councils was among the issues covered, as proposed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development. 23/ In addition, many developing countries need to ensure easier access to justice for the poorest sectors of their population. In order to enhance social equity in the context of structural adjustment programmes, conciliation, mediation and arbitration mechanisms have been proposed and implemented.

58. Legal reforms have also received preferential attention in technical co-operation, with a view to preventing corruption and adjusting legislation to the new dimensions of organized crime and illicit drug traffic. Furthermore, compliance with the Standard Minimum Rules for the Treatment of Prisoners and the Standard Minimum Rules for the Administration of Juvenile Justice has been upgraded by legal and administrative reforms, intended to help humanize the rehabilitation process. In co-operation with the United Nations Development Programme and the World Bank, efforts have been made to improve criminal justice statistics and legal informatics, in order to help shorten delays and encourage clarity and integrity in judicial administration.

59. Many countries are requesting assistance in training law-enforcement, judiciary and correctional personnel. National and regional seminars have been undertaken, with special emphasis on juvenile justice. The Basic Principles for the Independence of the Judiciary are considered to be of crucial importance in some Member States, where the quality and integrity of the judicial process are being improved, with full observance of human

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*There is one Interregional Adviser, who performs his duties in the framework of the Department of Technical Co-operation for Development, being attached to the United Nations Office at Vienna/Centre for Social Development and Humanitarian Affairs (UNOV/CSDHA). There is also one Regional Adviser for the Asian and Pacific region, financed by the Government of Japan, who is attached to the headquarters of the Economic and Social Commission for Asia and the Pacific headquarters at Bangkok.

rights. The problem of street children in various parts of the world, and the need to protect their rights, have received particular attention through projects to avoid victimization and provide education and training. Voluntary funds are needed, however, to support these projects.*

60. In pursuance of Economic and Social Council resolution 1989/65, a workshop on the application of forensic sciences to investigations of human rights violations was held at the Inter-American Court of Human Rights at San José, Costa Rica, in 1989, with the co-sponsorship of the American Association for the Advancement of Sciences.

61. There are also some interesting new developments for which improved co-ordination will be needed. For example, a number of national institutes or centres are promoting human rights in the administration of justice. Regional or subregional institutions and organizations are increasingly working in this field. Linkages could be established between them and the United Nations institutes to plan and implement joint projects. This, again, would require additional resources.

62. It is important to incorporate criminal justice and human rights components in development co-operation projects, a process that can only be accomplished gradually, through operational collaboration between criminal justice and development assistance, both at the governmental and non-governmental levels. 24/

(b) Human rights in the administration of justice

63. With a view to strengthening technical co-operation, collaborative initiatives with the Centre for Human Rights have been developed under the United Nations programme of advisory services in the field of human rights. UNOV/CSDHA participated in a seminar on human rights in the administration of justice, held in Moscow in 1988. Advisory services on human rights in the administration of justice were provided to the Government of Colombia and a follow-up training course on human rights in judicial inquiry was organized at Rome in 1989, in co-operation with the Government of Italy, the Centre for Human Rights and the United Nations Interregional Crime and Justice Research Institute.

64. Joint implementation of training projects on human rights in the administration of justice is being undertaken with the Centre for Human Rights, for example in Ghana, Haiti and Paraguay. UNOV/CSDHA contributed to the first meeting on interagency co-operation in advisory services and technical assistance in human rights, organized by the Centre for Human Rights at Geneva in 1989, and was represented at the second meeting, also held in 1990, at Geneva.

65. Apart from the co-operation that already exists with the Centre in the selection of experts, administration of fellowships and organization of seminars and training courses, numerous areas deserve consideration for future joint action, for example by means of the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, in accordance with Commission on Human Rights resolution 1990/59. 25/ Such action might include developing criminal justice training materials, strengthening legal aid

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*For details, see E/AC.57/1990/2, paras. 33-56, and E/1990/36, paras. 7-24.

services, establishing training workshops for the judiciary, organizing national and regional seminars on the application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex) and the new Convention on the Rights of the Child (General Assembly resolution 44/25, annex) and supporting the United Nations institutes in the field of human rights in the administration of justice. This would further help interested countries to develop or expand a strong national infrastructure for implementing existing standards.*

D. Publicity and dissemination of information

66. The responsibility for designing and carrying out publicity and information dissemination activities, as requested by the General Assembly and the Economic and Social Council, is shared between UNOV/CSDHA and the Department of Public Information, whose main offices are at United Nations Headquarters in New York and at Vienna and Geneva, with a network of United Nations information offices in various parts of the world. Since its restructuring in 1987, the Department of Public Information has placed considerable emphasis on crime prevention and criminal justice. In preparation for the Eighth Congress, a focal point was created within the Department to co-ordinate its work, formulate and implement multimedia information strategies, publicize existing standards, and increase promotional and outreach activities with Member States, intergovernmental and non-governmental organizations and the public.

67. Close co-operation between UNOV/CSDHA and the Department of Public Information in promoting the implementation of norms and guidelines requires maintenance and a further strengthening and complementary assessment of responsibilities. For example, UNOV/CSDHA has prepared a compendium of existing standards for the Eighth Congress (A/CONF.144/INF.2). This compilation of United Nations instruments in crime prevention and criminal justice, including new instruments adopted by the Eighth Congress, will be issued as a technical publication and widely disseminated to increase awareness of the subject. It will be particularly useful to those concerned with crime control and the observance of human rights in the justice process.

68. Information should be made available in a form that can be understood outside the professional community. The Department of Public Information and UNOV/CSDHA jointly prepared a brochure for the general public, which includes information on the existing standards and will also be distributed at the Congress.

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*For details, see documents E/CN.4/1989/43 and E/CN.4/Sub.2/1989/17. For a different perspective, see International League for Human Rights, Human Rights at the United Nations: Using Advisory Services, Brief No. 7, 1988; Rädda Barnen, UN Assistance for Human Rights (Stockholm, 1988); and Lawyers Committee for Human Rights, Underwriting Justice, 1989, and Abandoning the Victims, 1990. In the latter it is stated: "In all countries where the UN Commission on Human Rights decides to undertake any advisory services activities, it should do so only after extensive coordination with other UN agencies and, in particular, with officials of the UN Crime Prevention and Criminal Justice Branch in Vienna. Based on its expertise and consistent with its mandate, the Crime Branch should play the primary role in providing or coordinating the provision of all UN advisory or technical assistance to governments whenever law enforcement issues are involved" (p. 5).

E. The role of non-governmental organizations

69. The participation of non-governmental organizations in the Eighth Congress and the organization of ancillary meetings on Congress-related topics, including implementation, reflects the vital role they continue to play in United Nations crime prevention and criminal justice activities. Their wealth of expertise and experience at the grass-root level, as well as their commitment and ability to draw on their constituencies, are a vigorous and most valuable resource, at times the only one. Non-governmental organizations also play a vital part in initiating and implementing development projects, supplementing the efforts of Governments and greatly broadening the base of international co-operation. The NGO-Alliances on Crime Prevention and Criminal Justice, based in New York and at Vienna, are particularly active, as are their member organizations.

VII. NEW STANDARDS AND MODEL TREATIES

70. The Eighth Congress is called upon to consider the adoption of several draft instruments contained in the report of the Committee on Crime Prevention and Control on its eleventh session. 26/ These drafts were elaborated by the Committee in response to existing mandates, taking into account previous work, as well as the recommendations of the regional preparatory meetings (A/CONF.144/RPM.1-5) and observations from Governments, the United Nations institutes, non-governmental organizations and individual experts. Most standards had been based to a great extent on those discussed at the Interregional Preparatory Meeting on topic V (A/CONF.144/IPM.5, and Corr.1) and the International Expert Meeting on the United Nations and Law Enforcement: the Role of Criminal Justice and Law Enforcement Agencies in the Maintenance of Public Safety and Social Justice (E/AC.57/1988/NGO.2), held at Baden, Austria, from 16 to 19 November 1989.

71. While recognizing the traditions and cultural distinctiveness of Member States, the five draft instruments submitted for action by the Congress under this item set out principles accepted by the international community for use within the framework of national legislation and practice.

A. Draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

72. Government replies to the 1984-1985 United Nations survey on the implementation of the Code of Conduct for Law Enforcement Officials underlined the need for more specific provisions on the use of force and firearms by law enforcement officials (A/CONF.121/12, paras. 20-25). The Interregional Preparatory Meeting for the Seventh Congress expressed a similar interest in the subject (A/CONF.121/IPM.3, para. 34). Accordingly, the Seventh Congress, in its resolution 14, called for various measures to implement the Code, bearing in mind that the use of force and firearms by law enforcement officials should be commensurate with respect for human rights. The Economic and Social Council, in its resolution 1986/10, section IX, invited Member States to pay particular attention to this subject.

73. The gravity of the matter is confirmed by current international concern with the use of force and firearms, stressed by several international and regional bodies, such as the United Nations Commission on Human Rights (see resolution 1990/37) 27/ and its Sub-Commission on Prevention of Discrimination and Protection of Minorities (see resolution 1989/33), as well as by the

Council of Europe (see article 2, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms).*

74. In formulating the draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 28/ the Committee on Crime Prevention and Control took into account the Code of Conduct for Law Enforcement Officials. Differentiations were made, on the one hand, between general provisions applicable to the use of both force and firearms and special provisions applicable to the use of firearms only, and, on the other hand, between the various uses of force and firearms by individual law enforcement officials, in formation and larger units, and by prison officers. Special consideration was further given to: (a) the use of force and firearms as a last resort; (b) relevant ethical issues; (c) new technologies for developing non-lethal incapacitating weapons and ammunition for appropriate use; (d) graduated responses by law enforcement officials, proportionate to the situation; (e) qualifications and training in the use of force or firearms by law enforcement officials; (f) stress-counselling for law enforcement officials required to use force or firearms in the course of their duties; and (g) effective reporting and review procedures.

B. Draft Basic Principles on the Role of Lawyers

75. The Economic and Social Council, in its resolution 1986/10, section XII, requested the Committee on Crime Prevention and Control to pay particular attention to the role of lawyers. The Council requested the Secretary-General to study this question and to prepare a preliminary report for the Committee at its tenth session. This request was based on resolution 18 of the Seventh Congress, 29/ in which the Congress, inter alia, recognized that adequate protection of the rights of citizens required that all persons have effective access to legal services.

76. In formulating the draft Basic Principles on the Role of Lawyers, 30/ the Committee took into account, inter alia, the pertinent provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173, as well as the findings of the committee of experts at the International Institute of Higher Studies in Criminal Sciences, which dealt with the independence of the legal profession at a meeting at Noto, Italy, in 1982. The conclusions of the International Seminar on the Rights of the Defence, held by the Council of Europe at Madrid, in 1984, at the invitation of the Ministry of Justice, the General Bar Council of Spain and the Madrid Bar, were also relevant.

77. In accordance with resolution 1989/32 of the Commission on Human Rights, 31/ due account was taken of the study and draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18 and Add.1-6 and E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1). Attention was also paid to recommendations made at various meetings organized in 1989 by non-governmental organizations, such as the Conference of the International Commission of Jurists, held under United Nations auspices at Caracas, the Conference of the International Bar Association at Strasbourg, and the XIV International Congress on Penal Law at Vienna.

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*For the situation in Latin America, see Eugenio Raúl Zaffaroni, Sistemas Penales y Derechos Humanos in América Latina (Inter-American Institute for Human Rights, Ediciones Depalma, Buenos Aires, 1986).

78. The draft Basic Principles have a limited but well-focused approach: they contain pragmatic suggestions for the day-to-day operation of the legal profession, with emphasis on criminal justice. Attention is given to the following issues: effective access to legal services for all groups within society;* the right of the accused to counsel and legal assistance of their own choosing; education of the public on the role of lawyers in protecting fundamental rights and liberties; training and qualifications of lawyers and the prevention of discrimination with respect to entry into legal profession; the role of Governments, bar associations and other professional associations of lawyers; the right of lawyers to represent clients or causes without fear of repression or persecution; and the obligation of lawyers to keep communications with their clients confidential, including the right to refuse to give testimony.

C. Draft Guidelines on the Role of Prosecutors

79. The draft Guidelines on the Role of Prosecutors 32/ were drawn up by the Committee on Crime Prevention and Control in response to resolution 7 of the Seventh Congress, 28/ paying attention to fairness, openness, accountability and efficiency in matters relating to prosecution; qualifications, selection and training of prosecutors; their status, conditions of service and tenure; discretionary powers of prosecutors; their role in criminal proceedings; alternatives to prosecution; relations with the police and other public institutions; and disciplinary proceedings.

80. Emphasis was also placed on the following issues:

(a) Importance of the decision to prosecute or waive prosecution. The decision whether or not to prosecute is the most significant step in the prosecution process. A wrong decision, to prosecute or to waive prosecution, may undermine public confidence in criminal justice. In addition, the decision-making process should give due consideration to the interests of the victim, the suspect and the community;

(b) Special position of the prosecutor. The position of the prosecutor imposes special responsibilities: while lawyers can ethically defend a guilty person and still serve justice, the prosecutor must never prosecute a person of whose innocence he or she is convinced;

(c) Exclusion of discriminatory factors in decision-making. A decision whether or not to prosecute should not be influenced by such factors as:

(i) Race, religion, sex, national origin or political association, activities or beliefs of the suspect or any other person involved;

(ii) Personal feelings concerning the suspect or the victim;

(iii) Possible political advantage or disadvantage tc the Government or any political group or party;

(iv) Possible effects of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

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*With respect to developing countries, see John Hatchard, "The Right to Legal Representation in Africa: The Zimbabwean Experience", Lesotho Law Journal, 1988, vol. 4, No. 2, pp. 135 ff.

(d) Exercise of discretionary functions. In countries where prosecutors are vested with discretionary functions, fairness, openness, consistency and accountability in decision-making are of particular importance. But fairness does not mean weakness, nor does consistency mean rigidity. In view of the multiplicity of factors, the criteria for the exercise of discretion cannot be reduced to a strict formula. While it would be impossible to avoid certain elements of subjectivity, the potential for inconsistency can be reduced. The law and the prosecuting authority itself should provide prosecutors with objective criteria for decision-making and with mechanisms and safeguards for the internal review of decisions in appropriate cases to prevent or limit abuses of the prosecutor's far-reaching powers, thus ensuring both consistency and accountability.*

D. Draft statement of basic principles for the treatment of prisoners**

81. The Congress will consider and act on a draft statement of basic principles for the treatment of prisoners, 33/ originally proposed by the Latin American and Caribbean Regional Preparatory Meeting for the Eighth Congress (A/CONF.144/RPM.3 and Corr.2), on the basis of a statement submitted to the Committee on Crime Prevention and Control at its tenth session by several non-governmental organizations (E/AC.57/1988/NGO.5). The draft statement stipulates, inter alia, that all prisoners should be treated with the respect due to their inherent dignity and value as human beings, without discrimination of any kind. Except for the necessary limitations of the freedom of movement, all prisoners should retain the human rights and fundamental freedoms set out in universally recognized international instruments. The responsibility of prisons for the custody of prisoners and for the protection of society against crime should be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

E. Draft Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

82. In response to resolution 13 of the Seventh Congress, 34/ the Economic and Social Council, in its resolution 1986/10, section VIII, requested the Committee on Crime Prevention and Control to formulate a model agreement on the transfer of supervision of offenders conditionally sentenced or conditionally released for possible consideration by the Eighth Congress.

83. The draft Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, as elaborated by the Committee, 35/ draws on the experience gained from existing conventions, treaties and agreements. As previously noted in document E/AC.57/1988/7, attention is given to the scope of the draft Model Treaty, the types of transfer as well as the underlying basic principles relating to national sovereignty, dual criminality, rights of the victim, double jeopardy (ne bis in idem), adaptation and non-aggravation. The adoption of the Model Treaty by the Eighth Congress would be a further significant step towards intensified international co-operation in criminal justice matters (see A/CONF.144/10).

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*For a comparative analysis of this issue, see The Role of the Prosecutor, Y. E. Hall Williams, ed. (Avebury, 1988).

**For details, see the working paper on item 4 (topic II) of the provisional agenda (A/CONF.144/10).

VIII. PRIORITIES FOR FURTHER STANDARD-SETTING

84. The preparation of new United Nations standards, guidelines or principles has been recommended by United Nations bodies and meetings, including the Committee on Crime Prevention and Control and the regional preparatory meetings for the Eighth Congress. As in the past, the Congress may wish to provide policy guidance for new guidelines in the light of these recommendations. Their purpose would be to set out, on the basis of a general consensus, and in accordance with General Assembly resolution 41/120, internationally accepted standards for application in the framework of national legislation and practice.

85. In conformity with proposals made by Governments at the preparatory meetings for the Eighth Congress and by members of the Committee at its ninth, tenth and eleventh sessions, the following areas have been identified for the possible elaboration of new standards:

(a) Training of criminal justice personnel, particularly of law enforcement officials;

(b) Model training programmes in the field of juvenile justice;

(c) Draft convention on victims of crime and abuse of power;

(d) Right to a fair trial;

(e) Pre-trial detention;

(f) Prevention of delay in the criminal justice process;

(g) Human rights and the legal status of prisoners and detainees;

(h) Prison labour and education;

(i) Treatment of drug-addicted prisoners and those affected by the human immunodeficiency virus or the acquired immunodeficiency syndrome;

(j) Criminal law as a means of enforcing environmental protection;

(k) Prevention and control of specific types of criminality, such as terrorism and crimes of violence, organized crime, drug abuse, corruption, economic crime and computer crime;

(l) Laundering of money, search, seizure, forfeiture and confiscation of the proceeds of crime;

(m) Computerization of criminal justice.

86. In most of these fields, preliminary work has already started and draft resolutions and documentation are before the Congress. Since it would be impossible to elaborate new standards in all these areas, the Congress may wish to indicate which priorities should be observed.

IX. CONCLUSIONS

87. Experience with norms and guidelines in crime prevention and criminal justice at United Nations congresses has shown that extensive work is required

to achieve and implement universally acceptable results. Much has been done in a comparatively limited period of time, particularly in standard-setting, but much more remains to be done, especially in implementation.

88. The United Nations standards and guidelines form a set of guidelines that reflect the "conscience" of the international community. The successful evolution of the United Nations standard-setting and implementation programme in crime prevention and criminal justice requires existing problems to be acknowledged and more effective technical co-operation and advisory services.

89. These problems cannot be considered in isolation. They are similar to those which have been examined in a comprehensive report on effective implementation of international instruments on human rights, including reporting obligations under international instruments and human rights,* which was submitted to the General Assembly (A/44/668) and the Commission on Human Rights, in which the contributions of the Committee on Crime Prevention and Control and of the congresses are duly acknowledged.** While not all the recommendations may be applicable to crime prevention and criminal justice, in view of the special functions of the human rights treaty bodies as well as the nature of the reporting obligations, there are many which, mutatis mutandis, could be valid.

90. The attention of the Congress is also drawn to the study on promotion, protection and restoration of human rights at the national, regional and international level (E/CN.4/Sub.2/1988/33).*** It contains recommendations on mechanisms by which individuals might seek international judicial review of alleged human rights violation, once domestic remedies have been exhausted.****

91. In view of the vital importance of implementation, the Congress may wish to call on the Committee to prepare a plan applying the various standards and model treaties and monitoring their implementation, taking into account the availability of resources. It might be useful to structure implementation programmes, clustering or merging certain surveys according to the objectives of the standards concerned. A distinction may be made along the lines proposed by the Committee (E/AC.57/1990/WG.2, para. 36):

(a) Standards that are concerned with promoting or protecting the integrity of criminal justice administration, for example the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Independence of the Judiciary, the Standard Minimum Rules for the Administration of Juvenile Justice, and the new Basic Principles on the Role of Lawyers and Guidelines on the Role of Prosecutors;

(b) Standards that are essential matters of effectiveness of administration and international co-operation, for example the model treaties

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*Prepared by Philip Alston, Professor of International Law and Director of the Centre for Advanced Legal Studies at the Australian National University.

**See, in particular, paragraphs 37 and 143.

***Prepared by Erica-Irene Daes, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

****See, in particular, paragraph 514 of the report.

on extradition, mutual assistance and transfer of proceedings in criminal matters as well as transfer of supervision of offenders conditionally sentenced or conditionally released;

(c) Standards that are basically issues of penal policy or the administration of justice and human rights, for example the Standard Minimum Rules for the Treatment of Prisoners, the Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

92. In considering clustering, the Congress may wish to give importance to the integrity of the system and human rights in the administration of criminal justice, especially where there are particular grounds for concern. It may, however, also give priority to reports which would cover matters of great significance for the development of crime prevention and criminal justice, including issues affecting victims. A possible "programmatic implementation plan" might be drawn up in accordance with the above proposals, following the recommendations of the Congress.

93. Criminal justice is an area where reliable and accurate information is frequently difficult to assemble. There might be a case for an "implementation body", constituted by members of the Committee or other acknowledged experts, who would be entitled to collect and review information, visit countries if required, and report on their findings. Some research assistance would be needed. There would also be resource implications. In addition, there would be difficult questions to be faced, for example about such a body's status, method of appointment and mandate: whether, for instance, it would be entitled to have access to institutions or receive representations from organizations or individuals; and what its relationship would be with other bodies.

94. Certain matters, such as those related to the integrity of criminal justice systems, may not readily lend themselves to proper monitoring solely by means of periodic surveys. They would involve the training of members of the criminal justice services; public information and accountability; and political and managerial commitment at the ministerial and top management levels. A leading role might be played by the interregional and regional institutes in organizing conferences and training courses, with periodic reports to the Committee. Guidelines, manuals and syllabi should be developed for training in the operation of the criminal justice system, in accordance with resolution 8 of the Seventh Congress. 29/ Model texts for implementing national legislation might also be elaborated.

95. There would be an important role in the implementation process for the crime and justice information network, which should be strengthened. Considering the rapidly increasing work-load of UNOV/CSDHA in the implementation of standards, the entire reporting and monitoring systems need to be rationalized and computerized, with a view to enhancing efficiency and facilitating reporting by Member States, as well as the analysis of their reports.

96. Non-governmental organizations have a vital part to play in implementation, which should be further pursued. They are an important source of information on the situation existing at the grass-root level in various countries. They also provide an added perspective from the viewpoint of the "customer" and the wider public. They could contribute to the interpretation of the surveys' results, help to disseminate reports, and promote wider awareness and understanding.

97. Last, but not least, education and the dissemination of legal information constitute prerequisites for effective implementation. The study of United Nations instruments in crime prevention and criminal justice through the school and university systems, educational and cultural institutions and public organizations, including the mass media, would enable citizens, especially young people, to defend their rights and freedoms and also to have a better understanding of the interests of the community and their role and duties as its members. 36/

98. It should always be appreciated that the protection of human rights implies the preservation of basic liberties that all persons should be allowed to enjoy. An effective and humane justice system is vital to freedom, safety and the right to live in peace. While Governments will have to join forces to fight escalating crime by continuing to strengthen their defences and resources, and by improving their preventive and repressive measures, they should also reassert the fundamental values enshrined in international instruments.

Notes

1/ See First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4).

2/ See Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Kyoto, Japan, 17-26 August 1970: report prepared by the Secretariat (United Nations publication, Sales No. E.71.IV.8).

3/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. B.

4/ And ibid., sect. C.

5/ Ibid., sect. D.

6/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), paras. 79 and 80.

7/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. IV, sect. B, paras. 157 and 158.

8/ See Official Records of the Economic and Social Council, 1987, Supplement No. 5 (E/1987/18 and Corr.1 and 2), chap. II, sect. A.

9/ Ibid., 1988, Supplement No. 2 and corrigendum (E/1988/12 and Corr.1), chap. II, sect. A.

10/ Ibid., 1989, Supplement No. 2 (E/1989/20), chap. II, sect. A.

11/ Ibid., 1990, Supplement No. 2 (E/1990/22), chap. II, sect. A.

12/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. I, sect. E.

13/ See First United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., annex I, sect. A, annex, para 1.

14/ See, for example, Richard B. Lillich and Frank C. Newman, International Human Rights: Problems of Law and Policy (Boston, Massachusetts, Little and Brown, 1979), pp. 183-261; Albert Blaustein, Roger Clark and Jay Sigler, Human Rights Sourcebook (New York, Paragon, 1987), p. 115.

15/ See, for example, Lareau V. Monson, 507 F. Supp. 1177, 1187, n.9 (1980).

16/ Official Records of the Economic and Social Council, 1990, Supplement No. 2 (E/1990/22), chap. II, sect. A.

17/ Jan J. M. van Dijk, Pat Mayhew and Martin Killias, Experiences of Crime Across the World: Key Findings of the 1989 International Crime Survey, (Deventer and Boston, Kluwer, 1990).

18/ Official Records of the Economic and Social Council, 1990, Supplement No. 2 (E/1990/22), chap. II, sect. A, resolution 1990/35.

19/ Ibid., Supplement No. 10 (E/1990/31), chap. I, sect. D.

20/ Ibid., sect. C, decision 11/113.

21/ Roger Hood, The Death Penalty, A World-Wide Perspective: A report to the UN Committee on Crime Prevention and Control (Oxford, Clarendon Press, 1989).

22/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. I, sect. A.

23/ Ibid., sect. B, para. 20.

24/ Danish Centre of Human Rights, Human Rights in Domestic Law and Development Assistance Policies of the Nordic Countries, Lars Adam Rehof and Claus Gulmann, eds. (Dordrecht, Martinus Nijhoff Publishers, 1989), and Katharina Tomasevski, Development Aid and Human Rights (London, Pinter, 1989).

25/ Official Records of the Economic and Social Council, 1990, Supplement No. 2 (E/1990/22), chap. II, sect. A.

26/ Ibid., Supplement No. 10 (E/1990/31).

27/ Ibid., Supplement No. 2 (E/1990/22), chap. II, sect. A.

28/ Ibid., Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/107, annex.

29/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. I, sect. E.

30/ Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/109, annex.

31/ Ibid., Supplement No. 2 (E/1990/22), chap. II, sect. A.

32/ Ibid., Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/116, annex.

33/ Ibid., decision 11/115, annex.

34/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. I, sect. E.

35/ Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/121.

36/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., chap. I, sect. B.